



**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL
COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 28.09.2026 AT
10.30 A.M. THROUGH VIDEO CONFERENCING:**

**CORAM: SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)**

APPLICATION NUMBER : --
PETITION NUMBER : CP(IB)/154(CHE)2024
NAME OF THE PETITIONER : Qlar Technology India Private Limited
NAME OF THE RESPONDENT(S) : Kupps & Sachs India Pvt Ltd
UNDER SECTION : Sec 9 Rule 6 of IBC, 2016

ORDER

Present : Ld. Counsel Mr. Vijay for the Petitioner.

Vide separate order pronounced in open court, **CP(IB)/154(CHE)2024** is
Allowed.

Sd/-
RAVICHANDRAN RAMASAMY
Member (Technical)

Sd/-
JYOTI KUMAR TRIPATHI
Member (Judicial)

jp



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP(IB)/154(CHE)/2024

*(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, R/w Rule 6 of
the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,
2016)*

In the matter of Kupps & Sachs India Private Limited

Qlar Technology India Private Limited,
(Formerly known as
Schenck Process Solutions India Private Limited)
No.3 (Old No.18 & 23), 23rd Main Road,
KIADB Peenaya Industrial Area,
Peenya Village, Yeshwanthpur Hobli,
Bangalore, Karnataka, India – 560 058.

... Applicant / Operational Creditor

Vs.

Kupps & Sachs India Private Limited,
No. #143, 4th Main Road,
Balamurugan Gardens,
OMR (Rajiv Gandhi Road),
Thuraipakkam, Chennai,
Tamil Nadu, India – 600 097.

... Respondent / Corporate Debtor

Order Pronounced on 28th September 2026

CORAM

SHRI JYOTI KUMAR TRIPATI, MEMBER (JUDICIAL)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)



Present:

For Applicant : Ld. Counsels Mr. Jidesh Kumar, Mr. Naved Prasannan,
Mr. Vijay R Sekar

For Respondent : Ld. Counsel Mr.G. Sathyanarayana.

ORDER

(Heard Through Hybrid Mode)

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy code, 2016 (“IBC”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Qlar Technology India Private Limited** (hereinafter referred to as ‘Operational Creditor’ / ‘Applicant’) seeking to initiate Corporate Insolvency Resolution Process against **Kupps & Sachs India Private Limited** (hereinafter referred to as ‘Corporate Debtor’).

2. Part-I of the Application sets out of the details of the Operational Creditor. This present application was filed by the Operational Creditor, Schenck Process Solutions India Private Limited. During the pendency of the present Application, the Operational Creditor changed its name to Qlar Technology India Private Limited, pursuant to a fresh certificate of incorporation dated 06.11.2024, bearing Identification No. U74210KA2003PTC031537. It is represented by Mr. Sunik Shetty, its Authorized Representative having its office situated at



No. 3 (Old No. 18 & 23), 3rd Main Road, KIADB Peenya Industrial Area, Peenya Village, Yeshwanthpur Hobli, Bangalore, Karnataka, India – 560 058.

3. Part-II of the Application sets out the details of the Corporate Debtor, Kupps & Sachs India Private Limited, with Identification No. U80903KA2011PTC061427, incorporated on 15.11.2006, with an Nominal Share Capital of Rs. 1,95,00,000/- having its registered office at the then No. #143, 4th Main Road, Balamurugan Gardens, OMR (Rajiv Gandhi Road), Thuraipakkam, Chennai, Tamil Nadu, India – 600 097.

4. In Part-III of the Application the Operational Creditor has not proposed any Insolvency Professional to act as a Resolution Professional and therefore, prayed the Tribunal for appointment of Interim Resolution professional.

5. Part-IV of the Application states that the total outstanding Debt is Rs. 1,09,91,045/- (Rupees One Crore Nine Lakhs Ninety One Thousand and Forty Five Only), which comprises delay interest to the tune of Rs. 13,79,345/- (Rupees Thirteen Lakhs Seventy-Nine Thousand Three Hundred and Forty-Five Only) calculated at 18% per



annum as per the clause 3 of the Tax invoice. The date of default is occurred on 14.04.2023.

6. Part-V of the Application describes the particulars of the Operational Debt, documents, records and evidence of the default as below:

- Purchase order dated 12.10.2019,
- Tax Invoice dated 14.12.2022,
- Debit note dated 29.01.2024,
- Demand Notice dated 21.03.2024 issued by the Operational Creditor to the Corporate Debtor,
- E-mail communications between the parties.
- Bank certificate for non-receipt of payment from the Corporate Debtor during the period 13.04.2023 to 30.05.2024.

7. SUBMISSIONS OF THE OPERATIONAL CREDITOR:

7.1 It is stated that the Operational Creditor and the Corporate Debtor had inter alia entered into a purchase and supply transaction, whereby the Operational Creditor was engaged to supply the product, namely TMT Fulfiller Bulk Loader Machine – 100 TPH bearing Tag No. 170-BLM-001 (*hereinafter referred to as the “Machine”*) for the Dangote Project, pursuant to the Purchase Order placed by the Corporate Debtor on 12.10.2019.



7.2 It is stated that the Operational Creditor quoted a sum of Rs.1,08,50,000/- for the said Machine and the Corporate Debtor placed the order for the supply of the Machine, which was to be delivered by 23.01.2020. The supply was completed on 17.12.2022 by the Operational Creditor, when the Machine was delivered to the Corporate Debtor and thereafter the Operational Creditor raised an invoice dated 14.12.2022 amounting to Rs.1,27,61,700/-. The Operational Creditor received a sum of Rs. 31,50,000/- from the Corporate Debtor. The total outstanding amount, including interest at the rate of 18% per annum calculated from 13.04.2023 to 29.01.2024 is Rs. 1,09,91,045/-. It is stated that only one invoice dated 14.12.2022, remains outstanding and payable by the Corporate Debtor.

7.3 It is stated that the payment of the invoice amount is governed by the Quotation/Proposal, Purchase Order, and Tax invoice. As per Clause 3 of the tax invoice, the amount is to be paid within 120 days from the date of receipt of the invoice, failing which the parties agreed to a late-fee penalty at the rate of 18% per month on the outstanding amount from the date on which the amount becomes due.



7.4 It is stated that due to the deliberate lapse on the part of the Corporate Debtor in making the milestone payments as per the terms of the purchase order and its failure to provide dispatch clearances, the Corporate Debtor committed a material breach of the agreed terms. The default of the Corporate Debtor arose on 13.04.2023 and the same is recurring.

7.5 It is stated that the Corporate Debtor vide two emails dated 20.10.2023 and 27.10.2023 admitted the outstanding and assured the Operational Creditor that the same would be cleared before January 2024 and subsequently, by April 2024. The Operational Creditor issued a Demand Notice dated 21.03.2024 in compliance with Section 8 of the IBC read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the Corporate Debtor to pay the outstanding amount, which was never disputed and remained pending as on 13.04.2023, in furtherance of the follow up emails sent earlier.

7.6 It is stated that the Corporate Debtor neither paid the undisputed Operational Debt nor responded to the aforesaid Demand



Notice dated 21.03.2024 with regard to the repayment of the Operational Debt in full.

7.7 It is stated that the Operational Creditor issued a Debit Note dated 29.01.2024 for a sum of Rs.13,79,345/- towards interest at the rate of 18% per annum calculated on the total principal outstanding amount Rs. 96,11,700/-. Thus, a total Rs. 1,09,91,045/-, remained outstanding after the expiry of 180 days from the date of invoice dated 14.12.2022 payable by the Corporate Debtor along with interest at 18% per annum. The Corporate Debtor failed to make the payment. The details of the outstanding dues payable by the Corporate Debtor are extracted below:

SL.NO.	TAX INVOICE NO.	INVOICE DATE	AMOUNT DUE (in INR)
1.	9160222205	14-12-2022	12,761,700.00
2.	Amount Received till date by Our Client from You, the addressee		(31,50,000.00)
	Outstanding dues:		96,11,700/-
	TOTAL		1,09,91,045/-
	(Outstanding + Interest@18% p.a. calculated from 13-04-2023 to 29-01-2024)		



7.8 It is further submitted that despite repeated requests and reminders, the Corporate Debtor failed to make payment of the invoiced amount and made only a part payment of Rs. 31,50,000/- on 17.06.2023.

8. SUBMISSIONS OF THE CORPORATE DEBTOR:

8.1 It is stated that the Corporate Debtor is a certified turnkey contractor having experience in the design, engineering, manufacturing, supply and commissioning of integrated industrial packages.

8.2 As per the payment terms of the Purchase Order dated 12.10.2019, the Corporate Debtor paid an advance amount of Rs.10,50,000/- each on 15.10.2019, 13.08.2020 and 13.10.2022 aggregating to Rs. 31,50,000/-. Thereafter, the Operational Creditor issued a GST invoice dated 14.12.2022 amounting to Rs. 1,27,61,700/- towards the supply of goods. Accordingly, after adjusting the advance payments of Rs. 31,50,000/-, the net amount payable is Rs. 96,11,700/-.

8.3 It is stated that since the principal outstanding claimed by the Operational Creditor is less than Rs. 1 Crore, the Corporate Debtor contends that the minimum threshold prescribed under Section 4 of the



IBC has not been met. The Corporate Debtor submits that it made advance payments in good faith, which have not been properly accounted for by the Operational Creditor and that the corresponding payments and disputes have not been accurately reflected.

8.4 It is stated that the Corporate Debtor issued a purchase order for the delivery of Bulk Loader Machine for Dangote project, with the scheduled delivery date being 23.01.2020, pursuant to discussions and communications exchanged through emails. The Operational Creditor failed to adhere to the delivery schedule stipulated in the purchase order. The final inspection clearance for the aforementioned Machine was provided only on 21.09.2022, resulting in a delay of approximately 2 years and 3 months.

8.5 It is stated that the Corporate Debtor requested the Motor Data Sheet on 21.09.2020 to expedite the progress of the work and facilitate the release of the 10% advance upon approval of the data sheet and GAD. However, after a delay of 18 months, the Operational Creditor submitted the Data sheet on 01.04.2022. The Corporate Debtor offered the Machine/equipment for inspection on 08.07.2022. However, the final inspection was completed only on 21.09.2022, thereby causing



further delays. The alleged debt is substantially disputed due to delays and inefficiencies on the part of the Operational Creditor, which resulted in operational and financial losses to the Corporate Debtor.

8.6 It is stated that the initiation of the Corporate Insolvency Resolution Process (CIRP) under Section 9 of the IBC, 2016, is unwarranted in the present case as the company's financial statements and audited reports for the relevant period categorically demonstrate that there were no instances of default towards any financial creditor, including banks. The absence of any default to the banks demonstrates the company's financial discipline and operational stability and according to the Corporate Debtor, negates the operational creditor's contention regarding the Company's alleged insolvency.

9. REJOINDER OF THE OPERATIONAL CREDITOR:

9.1 It is stated that the interest can be clubbed with the principal amount of the debt for the purpose of determining whether the threshold prescribed for filing an Application under Section 9 of the IBC is met, as the same is expressly provided for in the Quotations, email communications and Tax invoices, the relevant portions of which are extracted hereunder. It is evident that the parties had specifically



agreed to charge interest on the overdue amount and that there was a specific agreement between the parties in this regard. Therefore the Operational Creditor did not rely solely upon the tax invoice for claiming interest.

Document & Annexure	Relevant pg. nos.	Relevant Extract
Annexure – 4: Copy of the quotation Schenck Reference: QT918000548 257 th June 2019	At page no. 51	<i>“PAYMENTS:..... Any undue delay in payments will warrant interest @18% p.a.”</i>
Annexure – 6: Email communications, reminders, requests and follow-ups	At page no. 76	Email dated 21 December 2023 – “..... Also please note that additional 18% interest will be charged for the delayed payment as per our agreed proposal terms.....”
Annexure – 7: Tax Invoice	At page no. 95	<i>“3. Interest at 18% p.a. will be charged extra, if invoice not paid by due date.”</i>

9.2 The Operational Creditor relied on the judgment of the Hon’ble Appellate Tribunal Judgement in *Prashant Agarwal vs Vikas Parasrampuria, (2022) SCC Online NCLAT 3781*, wherein it was held that both the principal debt and the interest delayed payment will be considered to assess maintainability in case the interest was stipulated in invoice.



9.3 It is stated that there is no pre-existing dispute and no notice of dispute was raised by the Corporate Debtor prior to the filing of the present Application under Section 9 of the IBC. There was a delay on the part of the Corporate Debtor in making the milestone payments and the Operational Creditor had sent reminder emails to the Corporate Debtor seeking payment of the outstanding milestone. The Corporate Debtor had never raised any issue regarding the alleged delay on the part of the Operational Creditor on any earlier occasions and the said contention has been raised only as an after-thought. Further, the Corporate Debtor received the Goods/machine without raising any objection and therefore, the Corporate Debtor cannot be permitted to raise such defences at this stage.

9.4 It is stated that the Corporate Debtor vide email dated 20.10.2023 admitted that its cash flow position was very poor and that it had delayed in communicating the same to the Operational Creditor. It is evident that the Corporate Debtor was facing financial difficulties, which resulted in the delay in making payments to the Operational Creditor. The relevant portion of the email dated 20.10.2023 is extracted below:



“Dear Madam Guna

Regret for the delay in response as we have been bogged down with project related deadlines and delivery issues.

Regarding the PDC. I wish to request you to allow us to issue a PDC post Jan 2024 spanning a few instalments at intervals as our cash flow situation is very bad currently and bound to improve.

The reason we delayed in conveying you this because I was only hoping that some expected payments may materialise and I can work out a plan before the end of the year.

All this could have been avoided had only Schenk claimed the LC in time and not allowing it to lapse. It is unfortunate as it is causing a lot of embarrassment for both of us. Kindly accept our proposal so that we can rest our anxiety to rest.”

10. WRITTEN SUBMISSIONS OF THE OPERATIONAL CREDITOR:

10.1 It is reiterated that Clauses 2 and 17 of the Terms & Conditions were incorporated in the invoice dated 14.12.2022, wherein Clause 3 of the Invoice, specifically provided that *“Interest at 18% p.a. will be charged extra, if invoice is not pay by due date.”*

10.2 It is reiterated that the Invoice was raised strictly in accordance with T&C forming part of the Purchase Order issued by the Corporate Debtor. The Invoice accompanied the delivery of the Machine to the Corporate Debtor, which accepted the Machine and the Invoice



without any protest or demur. Upon acceptance of the Machine and the Invoice, the Corporate Debtor was duty bound to clear the Invoice within the due date, failing which interest is leviable on the delayed payments in accordance with the T & C and the Invoice.

10.3 It is reiterated that the Corporate Debtor vide email dated 20.10.2023, clearly admitted that its cash flow position was poor. The relevant portion of the said email is extracted hereunder:

“Regarding the PDC. I wish to request you to allow us to issue a PDC post Jan 2024 spanning a few instalments at intervals as our cash flow situation is very bad currently and bound to improve. The reason we delayed in conveying you this because I was only hoping that some expected payments may materialise and I can work out a plan before the end of the year.”

10.4 It is reiterated that once again the Operational Creditor, vide email dated 21.12.2023, again invoked the levy of interest charge in accordance with the T&C read with Clause 3 of the Invoice and called upon the Corporate Debtor to respond to its emails. The Operational Creditor further notified the Corporate Debtor that interest at the rate of 18% per annum would be charged on delayed payments. The relevant portion of the said email is extracted hereunder:



“Also please note that additional 18% interest will be charged for the delayed payment as per our agreed proposal terms.”

10.5 It is reiterated that the Corporate Debtor received the Machine and the Invoice in December 2022 and did not raise any objection regarding the quality of the Machine. Clause 4 of the Invoice stipulates as follows:

“Any dispute in the material dispatched and services delivered on this invoice should be notified within 15 days of receipt of this invoice.”

However, the Corporate Debtor did not raise any dispute in this regard, even after the issuance of the Form 3 Demand Notice under Section 8 of the IBC.

11. WRITTEN SUBMISSIONS OF THE CORPORATE DEBTOR:

11.1 It is reiterated that, it is a settled position that a liability to pay interest cannot be read into a contract by implication, unilateral demand, or subsequent correspondence, where the original contract is silent in this regard. Mere issuance of reminders or invoices referring to an interest component, in the absence any corresponding contractual provision, cannot create a binding obligation upon the Corporate Debtor.



11.2 It is reiterated that the Applicant failed to adhere to the delivery schedule stipulated in the purchase order. The final inspection clearance for the Machine was provided only on 21.09.2022, resulting in a delay of approximately 2 years and 3 months. The said delay was communicated to the operational creditor through the various emails, wherein the corporate debtor repeatedly requested the Operational Creditor to arrange for inspection and clearance for delivery. Despite such communications, the supply was delayed for more than 2 years. Further, the Machine supplied did not comply with the prescribed technical specifications, as recorded in the inspection report.

11.3 It is stated that the Operational debts ordinarily arise from supply contracts, services, work orders, invoices and commercial arrangements, wherein disputes relating to quality, quantity, delay, defects, breach of representations or reconciliation of accounts are common. Parliament therefore placed a stricter threshold on operational creditors to ensure that the IBC is not used as a debt recovery weapon in cases requiring detailed adjudication.

FINDINGS OF THE TRIBUNAL



12. We have heard the learned Counsels for both the parties and perused the documents on record.

13. Before we dwell into the facts of the case it is relevant to refer Article 137 of the Limitation Act 1963, where the prescribed limitation period for recovery of a debt is three years. In the present case, the date of default is 13.04.2023. This Application has been filed on 24.07.2024. Hence, the Application filed is within the period of three years from the date of default.

14. It is seen from the records that the Operational Creditor was engaged for the supply of TMT Fulfiller Bulk Loader Machine – 100 TPH bearing tag No. 170-BLM-001 for the Dangote Project, pursuant to the Purchase Order dated 12.10.2019 placed by the Corporate Debtor. The Operational Creditor had quoted a sum of Rs.1,08,50,000/- for the said Machine and the Corporate Debtor placed the order for its supply with the delivery scheduled for 23.01.2020. However, the Machine was supplied on 17.12.2022 and the Operational Creditor raised an invoice dated 14.12.2022 for an amount of Rs. 1,27,61,700/-.

15. It is further seen that the payment of the invoice amount is governed by the Quotation/Proposal, Purchase Order, and Tax invoice.



As per Clause 3 of the invoice, the payment was to be made within 120 days from the date of receipt of the invoice with the due date being 13.04.2023. The Corporate Debtor made a part payment of Rs. 31,50,000/- on 17.06.2023.

16. We find that the Corporate Debtor has raised the pre-existing disputes relating to the quality of service, including delay in delivery, delay in submission of documents and delay in inspection. However, these disputes do not have any bearing on the principal amount payable under the invoice raised by the Operational Creditor. There is no dispute with regard to the quantum of the principal amount payable by the Corporate Debtor to the Operational Creditor, as is evident from the Reply/Objections filed by the Corporate Debtor, wherein it has admitted that a sum of Rs. 96,11,700/- is payable. The dispute is confined to the interest component and in particular whether the Operational Creditor is entitled to claim such interest under the terms and documents governing the transaction.

17. It is observed that the Terms & Conditions of the Operational Creditor specifically provide for payment of interest at the rate of 18%



per annum in the event of the delay in payment. The relevant portion thereof is extracted hereunder:

"2. ACCEPTANCE: Acceptance of your order will be subject to our terms and conditions of sale, which shall constitute the mutual agreement between us.

3...

4...

PAYMENTS:

....

Any undue delay in payments will warrant interest @ 18% p.a.

17. NO OTHER CONTRACT PROVISIONS: *Purchaser's own Terms and Conditions related to this order shall be without force and effect, except as they are identical herewith. No dealer, broker, branch manager, agent, employee, or representative of ours has any power or authority except to take orders for our products and to submit the same to us at our factory, for our approval and acceptance or rejection. There are no representations, agreements, obligations, or conditions, expressed or implied, statutory or otherwise relating these to the subject matter hereof, other than herein contained, and these terms and conditions shall be incorporated in and become a part of any agreement between the parties with reference to purchase of our products."*

18. It is further seen that vide email dated 21.12.2023, the Operational Creditor invoked the levy of interest in accordance with the Terms & Conditions read with Clause 3 of the Invoice and



informed the Corporate Debtor that interest at the rate of 18% per annum would be charged on the delayed payments. The Terms & Conditions forming part of the Quotation and the invoice indicate that the Operational Creditor was entitled to claim the interest on delayed payments and the Corporate debtor was duly informed of the same vide the aforesaid email dated 21.12.2023. In view of the above, the corporate debtor cannot, at this stage dispute the interest component for the purpose of determining the threshold prescribed for initiation of CIRP under the IBC. The relevant portion of the email dated 21.12.2023 is extracted hereunder:

“Also please note that additional 18% interest will be charged for the delayed payment as per our agreed proposal terms.”

19. The total outstanding amount, including interest at rate of 18% per annum calculated from 13.04.2023 to 29.01.2024 is Rs. 1,09,91,045/-. The Corporate Debtor failed to make payment and consequently, committed default in respect of the said debt. As stated in the Application, the total debt due and payable is Rs.1,09,91,045/- (Rupees One Crore Nine Lakhs Ninety-One Thousand and Forty-Five Only)



which exceeds the threshold limit of Rs. 1 Crore prescribed under Section 4 of the IBC.

20. It is observed that the Corporate Debtor vide email dated 20.10.2023 admitted the outstanding operational debt and assured the Operational Creditor that the same would be cleared before January 2024. Subsequently, the Operational Creditor issued a Demand Notice dated 21.03.2024 calling upon the corporate debtor to pay the outstanding amount which had not been disputed by the Corporate Debtor prior to the issuance of the Demand Notice. The said outstanding amount was due and payable as on 13.04.2023 and the Demand Notice was issued in furtherance of the earlier communications and reminders sent by the Operational Creditor.

21. Therefore, we find that there was no pre-existing dispute with regard to the debt prior to the issuance of the Demand Notice, nor was any notice of dispute raised by the Corporate Debtor before the filing of the present Application under Section 9 of the IBC.

22. It is observed that upon issuance of the Purchase Order, the Corporate Debtor was bound to make the milestone payments to the Operational Creditor in accordance with the Terms & Conditions.



However, the Corporate Debtor failed to make the milestone payments within the stipulated time and also failed to make the final payment after delivery of the Machine on 17.12.2022, which was accepted by the Corporate Debtor. The amount due towards the supply of the Machine falls within the definition of the “Operational debt” under Section 5(21) of the IBC.

23. It is further seen that the pleas made by the Corporate Debtor regarding delay in submission of documents and delay in inspection cannot be sustained, as no such dispute was raised by the Corporate Debtor at the relevant time. Further, the Corporate Debtor received the Goods/Machine without raising any objection. Therefore, the said contentions cannot be permitted to be raised at this stage, particularly when no such dispute was raised prior to the filing of the present application.

24. Further, the Corporate Debtor vide email dated 20.10.2023 admitted that its cash flow position was very poor. The said admission indicates that the Corporate Debtor was facing financial difficulties, which contributed to the delay in making payments to the Operational



Creditor. The relevant portion of the email dated 20.10.2023 is extracted hereunder:

“...Regret for the delay in response as we have been bogged down with project related deadlines and delivery issues.

Regarding the PDC. I wish to request you to allow us to issue a PDC post Jan 2024 spanning a few instalments at intervals as our cash flow situation is very bad currently and bound to improve.

The reason we delayed in conveying you this because I was only hoping that some expected payments may materialise and I can work out a plan before the end of the year....”

25. The short point for consideration is whether any operational debt against the Corporate Debtor has been proved and become due and payable, whether the corporate debtor has defaulted in the payment and whether there is any pre-existing dispute between the parties. This examination would be in line with the test which has been laid down by the Hon’ble Supreme Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353*** (‘Mobilox’ in short) which is extracted below:

“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine: (i) Whether there is an “operational debt” as defined exceeding Rs. 1 lakh? (See Section 4 of the Act) (ii) Whether the documentary evidence



furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute? If any of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

26. For ready reference relevant provisions under the IBC are extracted:

- **Section 3(11): “debt”** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt”
- **Section 5(21): operational debt”** means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”
- **Section 3(12): Default** ”means non-payment of debt when whole or any part or instalment of the amount of debt has become due and



payable and is not paid by the debtor or the corporate debtor, as the case may be;”

27. To decide on the question whether the applicant has proved that there is a debt that is due and payable which is defaulted by the corporate debtor, we would refer to the judgement of Hon’ble Supreme Court in ***Macquarie Bank Limited v. Shilpi Cable Technologies Limited 2018*** where it was held as follows:

“Section 9(1) contains the conditions precedent for triggering the Code insofar as an operational creditor is concerned. The requisite elements necessary to trigger the Code are: (i) occurrence of a default; (ii) delivery of a demand notice of an unpaid operational debt or invoice demanding payment of the amount involved; and (iii) the fact that the operational creditor has not received payment from the corporate debtor within a period of 10 days of receipt of the demand notice or copy of invoice demanding payment, or received a reply from the corporate debtor which does not indicate the existence of a pre-existing dispute or repayment of the unpaid operational debt. It is only when these conditions are met that an application may then be filed under Section 9(2) of the Code in the prescribed manner, accompanied with such fee as has been prescribed ...”

28. It is an admitted fact that the Corporate Debtor and the applicant are in business relationship as the parties were engaged in continuous



business transactions. The Operational Creditor has placed on record Purchase Order dated 12.10.2019, Tax Invoice dated 14.12.2022, Debit note dated 29.01.2024, Email communications between the parties, demanding payment from the corporate debtor and details of supplies made by the applicant to the corporate debtor, Demand Notice dated 21.03.2024, which establish that the outstanding debt is due and payable by the Corporate Debtor.

29. We find that once the Operational Creditor discharges its burden of proof, then the onus to prove that the debt is “disputed”, shifts upon the corporate debtor, who may do so, by adducing documentary evidence to establish the same. It is to note that the onus on the corporate debtor is not to prove that it will succeed in such dispute, but to merely show that such a dispute exists and such dispute is not moonshine or spurious.

30. In the present case, there is no document evidencing the existence of any pre-existing dispute between the Operational Creditor and the Corporate Debtor.

31. As held in the case of *Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd.*, supra if there is a debt and default, and there is no



pre-existing dispute the Application filed under Section 9 of IBC has to be admitted.

32. Taking into consideration the facts and circumstances of the case, as well as the position of Law, we are of the view that the Application filed by the Operational Creditor, is to be **Admitted** under Section 9(5) of the IBC, 2016. **We order accordingly.**

33. In the present case, the operational creditor has not proposed the name of any Insolvency Professional to act as a Resolution Professional and hence this Tribunal appoints **Mr. Sanjeevi C** having **Reg No: IBBI/IPA-003/IP-N00108/2017-2018/11215,** (Email: *sanjeevicra@yahoo.in*) whose AFA is valid till **31.12.2026** as the “Interim Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15, 17, 18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.



34. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14 shall apply in relation to the Corporate Debtor as under:

“(1) Subject to provisions of subsections (2) and (3) on the insolvency commencement date the Adjudicating Authority shall by order declare prohibiting all of the following namely:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;*
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.*

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority,



sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

35. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

“(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.”



36. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

“(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.”

37. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/- (Rupees Two Lakhs Only)** to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

38. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named



by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

39. Accordingly, Company Petition **CP(IB)/154(CHE)/2024** stands **admitted and disposed of.**

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)